EXHIBIT 5

In The Matter Of:

v. MOTOROLA INC., et al.

GREGORY LEONARD, Ph.D. - Vol. 1 June 24, 2013

HIGHLY CONFIDENTIAL

MERRILL CORPORATION

LegaLink, Inc.

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1	(Exhibit 6 was marked for identification.)	09:19
2	THE WITNESS: I got it.	09:19
3	BY MR. PRITIKIN: Q. Is Exhibit 6 a copy of an	09:19
4	expert report you prepared and that is dated October 21,	09:20
5	2011, in the Apple-Motorola litigation?	09:20
6	A. It seems to be, yes.	09:20
7	Q. Would you turn, please, to page 7.	09:20
8	A. Okay.	09:20
9	Q. Would you read paragraph 9 to yourself.	09:20
10	A. Okay.	09:20
11	Q. Do you still agree with this statement in	09:20
12	paragraph 9?	09:20
13	A. Yes.	09:20
14	Q. Would you turn to paragraph 10. In paragraph	09:20
15	10 you wrote, "For a royalty to be FRAND" and you	09:20
16	understand FRAND to mean the same as RAND? Those are	09:20
17	interchangeable terms?	09:20
18	A. From an economist's point of view. And again,	09:20
19	I'm not sure, there may be a legal difference, I guess.	09:21
20	But from my point of view, they're basically the same.	09:21
21	Q. All right. In paragraph 10 you wrote, "For a	09:21
22	royalty to be FRAND, it should be commensurate with the	09:21
23	economic value of the patented technology to the	09:21
24	licensee relative to the next best alternative	09:21
25	technology prior to the standard being set, and thus	09:21

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1	should not include any hold-up value that derives simply	09:21
2	from the patented technology being incorporated into the	09:21
3	standard."	09:21
4	Do you believe that is a correct statement?	09:21
5	A. Yes.	09:21
6	Q. Now, did you also give a deposition in the	09:21
7	Apple-Motorola litigation?	09:21
8	A. I did, at least one.	09:21
9	Q. Let's mark this as Exhibit 7.	09:21
10	(Exhibit 7 was marked for identification.)	09:21
11	BY MR. PRITIKIN: Q. And you recognize	09:22
12	Exhibit 7 is the transcript of a deposition that you	09:22
13	gave on April 26, 2012?	09:22
14	A. 20 April what? 20?	09:22
15	Q. 26, 2012. On the last page.	09:22
16	A. Mine says 25th. Do I have the same one?	09:22
17	Q. Well, let's use the date on the cover then.	09:22
18	Different date on the last page, for some reason.	09:22
19	A. Okay.	09:22
20	Q. Would you turn to page 25 of the transcript.	09:22
21	A. Okay.	09:22
22	Q. Why don't you take a moment and, just to	09:22
23	refresh your memory, read over, to yourself, page 25	09:23
24	through 28.	09:23
25	MR. CANNON: 28?	09:23

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1	to interconnect with certain other devices somebody	09:27
2	might have in their home. Those devices would have	09:27
3	802.11.	09:27
4	So, again, it's probably more likely if there	09:27
5	was lock-in at that point for 802.11.	09:27
6	BY MR. PRITIKIN: Q. Have you read the	09:27
7	testimony of Mr. Danski (phonetic) in the first trial?	09:27
8	A. Probably, I think so.	09:27
9	Q. Are you aware that he testified that H.264 was	09:27
10	extremely important to Microsoft products?	09:28
11	A. Yeah. I mean I do remember that. But there	09:28
12	are all I'm saying is there are alternatives to	09:28
13	H.264. It's simply a question of, you know, whether	09:28
14	those were viable in those circumstances.	09:28
15	Q. You're not an offering opinion one way or the	09:28
16	other on that?	09:28
17	A. I'm not, no. I'm just trying to answer your	09:28
18	question right now.	09:28
19	Q. And what is hold-up?	09:28
20	A. Hold-up is the idea there is that if someone	09:28
21	is is locked in, that you take advantage of that	09:28
22	lock-in to attempt to extract, in this context again, a	09:28
23	higher royalty than would be than you'd be able to	09:28
24	get if they weren't lock-in.	09:28
25	Q. Now, in the testimony that you provided in this	09:28

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1	earlier litigation if you look at page 27 you said	09:28
2	that it has again to do I'm starting at line 10. It	09:28
3	has again to do with the hold-up, which flows from	09:29
4	potential lock-in, that once you've made investments and	09:29
5	setting the standard and companies have designed to the	09:29
6	standard to sell their products, that creates	09:29
7	potentially, not always, but sometimes it creates	09:29
8	switching costs to sort of undoing that. And that	09:29
9	creates a possibility for hold-up to occur.	09:29
10	Do you agree with that?	09:29
11	A. Yeah, I think that's what I just said.	09:29
12	Q. And then you went on to say and, you know, from	09:29
13	my point of view, the whole purpose of FRAND is to try	09:29
14	to avoid that.	09:29
15	Is that a correct statement?	09:29
16	A. Yes.	09:29
17	Q. And the "that" you're referring to is hold-up?	09:29
18	A. Yes, exactly.	09:29
19	Q. Now, would you expect that the owner of	09:29
20	standard-essential patents that has made RAND	09:29
21	commitments should know that it cannot engage in	09:29
22	hold-up?	09:29
23	MR. CANNON: Object to the form of the	09:30
24	question.	09:30
25	THE WITNESS: What do you mean "should know	09:30

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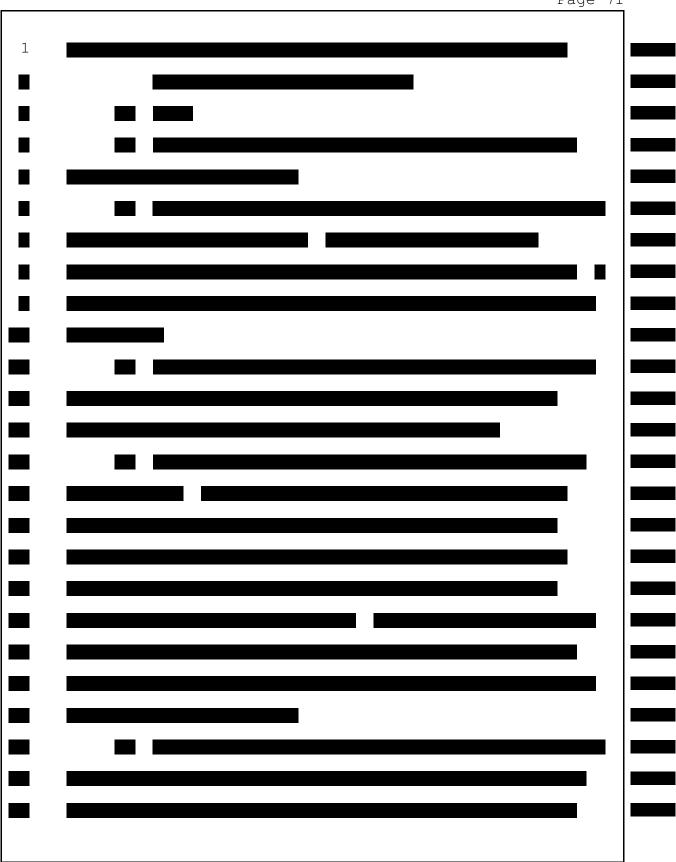
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	1	them to start their again, Microsoft had the	10:49
	2	negotiation continued instead of having them sue, they	10:49
	3	would have been able to to make their arguments,	10:50
	4	and but as far as an opening offer goes in the	10:50
	5	context that we're talking about, I don't think it was	10:50
	6	unreasonable.	10:50
	7	Q. My question is a little different. I	10:50
	8	understand that because I read your report.	10:50
	9	My question is: Do you think those were RAND	10:50
	10	rates?	10:50
	11	MR. CANNON: Object to the form of the	10:50
	12	question.	10:50
	13	THE WITNESS: As I've explained, I've taken the	10:50
	14	judge's decision as given. He specified what the RAND	10:50
	15	rates are, so I've taken those as given. In that	10:50
	16	context, you know, 2.25 percent, you know, is outside	10:50
	17	the range that the judge determined. So in that sense,	10:50
	18	they're certainly above the RAND range that he	10:50
	19	identified. So in that mathematical sense, you know,	10:50
	20	that's that is what it is.	10:50
	21	BY MR. PRITIKIN:	
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25	have those handy there, those are the October let	ters. 10:5
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1	consistent with its RAND commitments?	13 : 42
2	MR. CANNON: Object to the form of the	13:42
3	question.	13:42
4	THE WITNESS: First of all, there's there's	13:42
5	a legal determination there. From my point of view,	13:42
6	again, I don't think it necessarily matters subject to	13:43
7	the patent owner, even if they get an injunction,	13:43
8	continuing to to work under the RAND commitment.	13:43
9	BY MR. PRITIKIN: Q. Do you think there are	13:43
10	any circumstances where the owners of standard-essential	13:43
11	patents would be abusing its RAND commitment by trying	13:43
12	to get an injunction against a prospective licensee?	13:43
13	A. Well, I think if it used an injunction to	13:43
14	obtain the hold-up value, then that could be a problem.	13:43
15	But it's really getting the hold-up value that's the	13:43
16	real the real difficulty there. They're not	13:43
17	injunction in and of itself. I mean if you have an	13:43
18	injunction, but again you negotiate on RAND terms, you	13:43
19	know, the outcome of that should be a RAND royalty.	13:43
20	Q. Do you think the owner of standard-essential	13:44
21	patents is acting in good faith if it tries to obtain an	13:44
22	injunction while it's engaged in good faith negotiations	13:44
23	with the implementer?	13:44
24	A. Like I said, at some point in the negotiation,	13:44
25	you have two parties that are negotiating in good faith	13:44

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1	could just simply disagree. And at that point, you	13:44
2	know, there's a litigation process that can be	13:44
3	instigated and exclusion orders or injunctions are part	13:44
4	of that process.	13:44
5	Again, if if the patent owner then uses that	13:44
6	to try to get hold-up value, then I think that's	13:44
7	potentially problematic. But, you know, in principal, I	13:44
8	don't think that you should say oh an standard-essential	13:44
9	patents owner should never get a should never be	13:45
10	allowed to have an injunction or exclusion order.	13:45
11	Q. What do you mean by "hold-up value" in the	13:45
12	context you've testifying about in the last few minutes?	13:45
13	A. I think we talked about that before. So it's	13:45
14	hold-up value would be value above value of the	13:45
15	technology in the particular application that we're	13:45
16	talking about, as compared to the non-infringing	13:45
17	alternative technologies that could have been used in	13:45
18	the standard at the time the standard was set. You	13:45
19	know, in broad terms, that's what I'm talking about.	13:45
20	Q. Now, normally license negotiations take a	13:45
21	period of time to conclude, in your experience?	13:45
22	A. Yes, some short; some long, yes.	13:45
23	Q. How long would you have expected reasonably a	13:45
24	negotiation to have taken between Microsoft and Motorola	13:45
25	for the Motorola standard-essential patents?	13:46

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1	have been a lot of discussion about. And, you know,	14:10
2	given Motorola's history, I think they would have	14:10
3	responded to that discussion. But as an opening offer,	14:10
4	again, I think it's in the time period you had and the	14:11
5	context that was at issue and with the lack of	14:11
6	experience, I think it was a reasonable thing for	14:11
7	Motorola to default to that as an opening offer.	14:11
8	Q. You understand that the cellular portfolio is a	14:11
9	strong portfolio?	14:11
10	A. Yes.	14:11
11	Q. You've been told that by Mr. Dailey?	14:11
12	A. And it's just true, from market evidence.	14:11
13	Q. And Motorola knew that in 2010?	14:11
14	A. Yes.	14:11
21	Q. And you understand that the cellular licenses	14:11
22	are not comparable licenses for purposes of determining	14:11
23	a royalty for 802.11 and H.264, don't you?	14:11
24		
	A. I think that's again something that we can know	14:12
25	A. I think that's again something that we can know now by looking at all the materials been produced in	14:12 14:12
25		

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	MR. CANNON: Object to the form of the	
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questio	on.	
	BY MR. PRITIKIN: Q. It's apparent from the	e
	BY MR. PRITIKIN: Q. It's apparent from the	

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1	the amounts that are being sought are enormous; isn't	15:13
2	that correct, sir?	15:13
3	A. I don't know what you mean by "enormous."	15:13
4	Q. Do you think billions of dollars are enormous?	15:13
5	A. Well, I mean as sitting here myself, you know,	15:13
6	for one thing we don't know what time frame we're	15:13
7	covering. I'm not sure I could tell you what the	15:13
8	what the amount is we're talking about without doing	15:13
9	some more work.	15:13
10	Q. Now, based on publicly available information,	15:13
11	Motorola could have figured out approximately what it	15:13
12	was demanding at a 2.25 percent royalty; could it not?	15:13
	So, again, you	15:13
	So, again, you know, I think what we're talking about here is a	15:13 15:13
16	know, I think what we're talking about here is a	15 : 13
16 17	know, I think what we're talking about here is a situation where they put something in this letter	15:13 15:14
16 17 18	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that	15:13 15:14 15:14
16 17 18	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that would allow them to reach a conclusion later on.	15:13 15:14 15:14 15:14
16 17 18 19 20	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that would allow them to reach a conclusion later on. So I mean especially in that context, given	15:13 15:14 15:14 15:14 15:14
16 17 18 19 20 21	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that would allow them to reach a conclusion later on. So I mean especially in that context, given that he's very clear that that's one of the things he	15:13 15:14 15:14 15:14 15:14
16 17 18 19 20 21 22	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that would allow them to reach a conclusion later on. So I mean especially in that context, given that he's very clear that that's one of the things he wanted to understand better. You know, I don't if I	15:13 15:14 15:14 15:14 15:14 15:14
16 17 18 19 20 21 22 23	know, I think what we're talking about here is a situation where they put something in this letter because they were expecting to get more information that would allow them to reach a conclusion later on. So I mean especially in that context, given that he's very clear that that's one of the things he wanted to understand better. You know, I don't if I were him, I would be sitting there saying, okay, I got	15:13 15:14 15:14 15:14 15:14 15:14 15:14

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1	So, you know, this calculation that you're	15:14
2	suggesting, it's not even worth the time to do it	15 : 14
3	because undoubtedly things are going to change when you	15 : 14
4	hear back from Microsoft if if that had happened.	15 : 14
5	Q. Well, let's indulge me, please. Let's see if	15 : 14
6	we can figure out what had been readily knowable to	15:14
7	Motorola at the time the letters were sent. There is	15 : 14
8	publicly available information on global sales and	15 : 14
9	personal computers, right? You know that?	15:14
10	A. Yes, yes.	15 : 14
11	Q. And you've heard of a company called Gartner?	15 : 14
12	A. Sure.	15 : 15
13	Q. They issue forecasts and reports on sales of	15 : 15
14	personal computer?	15 : 15
15	A. They do.	15 : 15
16	Q. And you can get information about that on the	15 : 15
17	Internet, right?	15 : 15
18	A. Well, I don't know. You can get very summary	15 : 15
19	information. Typically you need to pay them a fair	15 : 15
20	amount of money to get something more detailed.	15 : 15
21	Q. Motorola could readily have ascertained the	15 : 15
22	approximate number of PC and laptop sales at the time it	15 : 15
23	sent the letter in May of 2010, right?	15 : 15
24	A. I'm sorry, they could have ascertained what?	15 : 15
25	Q. Readily have ascertained the amount of	15 : 15

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1	worldwide laptop and PC sales at the time it sent the	15:15
2	letters in October of 2010?	15 : 15
3	A. Well, they they could get an estimate from a	15 : 15
4	company like Gartner. I mean that is an estimate.	15 : 16
5	Q. And you could have gotten that they could	15:16
6	have gotten that on the Internet, right?	15:16
7	A. Again, I don't know what Gartner posts on the	15:16
8	Internet. Of course you would want to have you know,	15 : 16
9	you wouldn't want to have, for instance, the Apple units	15 : 16
10	in there and stuff like that.	15 : 16
11	(Exhibit 16 was marked for identification.)	15 : 16
12	BY MR. PRITIKIN: Q. Could you take a look at	15 : 16
13	Exhibit 16.	15 : 16
14	A. Sure.	15 : 16
15	Q. You see the date on that? It's pulled off the	15:16
16	Internet dated May 27, 2010. The dates.	15:16
17	A. Which dates?	15:16
18	Q. The date of the article.	15:16
19	A. Okay.	15 : 16
20	Q. So that's prior to October of 2010 when the	15:17
21	letters were sent?	15:17
22	A. Right.	15:17
23	Q. And if you look at the second paragraph of the	15:17
24	article, it says that Gartner projects PC shipments will	15:17
25	reach 376 million units in 2010.	15:17

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1	A. Okay.	15:17
2	Q. And you would agree with me that data of this	15 : 17
3	kind is was readily available in 2010?	15 : 17
4	MR. CANNON: Object to the form of the	15 : 17
5	question.	15 : 17
6	THE WITNESS: Just, for instance, I'm not sure	15 : 17
7	whether these include Apple products or not.	15 : 17
8	BY MR. PRITIKIN: Q. Well, let's assume it	15 : 17
9	does. But data of this sort was readily available,	15 : 17
10	wasn't it?	15 : 17
11	A. That's my point, is if you wanted to pull Apple	15 : 17
12	out of it, which would make a lot of sense since they	15 : 17
13	wouldn't have Microsoft operating systems on it. Then	15 : 17
14	you would probably have to buy the report from from	15 : 17
15	Gartner. Obviously Motorola could have done that.	15 : 18
16	But, again, for an opening offer, when you	15 : 18
17	expect to just get the information from from	15 : 18
18	Microsoft itself. And what's more understand the way	15 : 18
19	the business operates, then, you know, why go through	15 : 18
20	this effort when you're about to get what you think	15 : 18
21	or you think you're about to get the actual information	15 : 18
22	that's truly relevant.	15 : 18
23	Q. You can volunteer that whatever answer if you	15:18
24	want to, Dr. Leonard. And at some point we may go back	15:18
25	to the court to ask for more time for the deposition.	15:18

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	1	A. Please do.	15:18
	2	Q. Would you please listen to my question and	15 : 18
	3	answer the question I'm asking.	15:18
	4	A. I answer the question I'll answer the	15:18
	5	question the way that I see fit. I know very well how	15 : 18
	6	this works. And your posturing is not going to have any	15:18
	7	impact on me whatsoever.	15:18
	8	Q. We'll call Judge Robart at some point, sir.	15 : 18
	9	A. Okay. Go ahead.	15 : 18
	10	Q. You've been through this drill before.	15 : 18
	11	A. Okay. Go ahead.	15:18
	12	Q. Well, we will at some point if you don't answer	15:18
	13	the question.	15:18
	14	MR. CANNON: He's answering the question.	15:18
	15	Let's take a short break. Let's take a break.	15:18
	16	MR. PRITIKIN: Why don't you talk to this guy.	15:18
	17	THE VIDEOGRAPHER: Off the record at 3:19.	15 : 18
	18	(Short break taken.)	15:30
	19	THE VIDEOGRAPHER: Back on the record at 3:30.	15:30
	20	BY MR. PRITIKIN: Q. Dr. Leonard, just so	15:30
	21	we're clear. I'm going to be asking you questions about	15:30
	22	information that could have been obtained by Motorola.	15:30
	23	I'm not asking you what was actually known. I'm asking	15:30
	24	you questions about what was available or what could	15 : 31
	25	have been obtained.	15 : 31

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1	Do you understand the predicate for the	15:31
2	questions?	15 : 31
3	A. Sure.	15 : 31
4	MR. PRITIKIN: Mark this as the next exhibit.	15 : 31
5	What number?	15:31
6	THE REPORTER: 17.	15 : 31
7	(Exhibit 17 was marked for identification.)	15:31
8	BY MR. PRITIKIN: Q. Do you see Exhibit 17 is	15 : 31
9	information obtained from the internet, the article is	15:31
10	dated January 22, 2010?	15:31
11	A. Yes.	15 : 31
12	Q. And it shows the Microsoft operating system	15 : 31
13	market share at around 90 percent. Do you see that?	15 : 31
14	A. Yes.	15 : 31
15	Q. And is that consistent with what your	15 : 31
16	understanding was at the time of approximately what	15 : 32
17	Microsoft's market share was of the operating system	15 : 32
18	market?	15 : 32
19	A. I mean I didn't go back to look at that myself	15 : 32
20	specifically, so this is the end of 2009. So I'd	15 : 32
21	have to go back to look at it.	15 : 32
22	Q. That percentage doesn't surprise you, does it?	15 : 32
23	Just based on your own do you try to keep up with the	15 : 32
24	computer markets and industry?	15 : 32
25	A. Yes, I do.	15 : 32

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1	Q. Is that consistent with what your understanding	15:32
2	is, around 90 percent was Windows?	15:32
3	A. Certainly in a rough in a rough sense. I	15:32
4	guess I don't know whether this is worldwide or U.S.	15:32
5	again. But	15 : 32
6	Q. I think it shows worldwide, doesn't it, on the	15 : 32
7	left there? That's what it says.	15 : 32
8	A. I think that does say worldwide there, yes.	15:33
9	Q. All right. Now, if we go back to Exhibit 16.	15:33
10	And if you look down a little further to the second	15:33
11	paragraph that says, "Gartner projects worldwide PC	15:33
12	shipments will reach 376 million units in 2010. Total	15 : 33
13	spending is expected to reach 245 billion in 2010."	15:33
14	Do you see that?	15:33
15	A. Yes.	15:33
16	Q. And if we assume that the Microsoft share of	15:33
17	the operating system market is around 90 percent, that	15:33
18	would mean that worldwide sales of PCs with Windows	15:33
19	operating systems would be around \$220 billion?	15:34
20	A. Just in provides us here this is the	15 : 34
21	forecast and the the time periods don't match up.	15 : 34
22	But, you know, it's going to be in that ballpark	15:34
23	probably.	15:34
24	Q. Now, assuming that worldwide sales of PCs with	15:34
25	Windows were on the order of let's just take a round	15:34

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1	number \$200 billion. Can you make that assumption	15:34
2	for me?	15:34
3	A. Okay.	15:34
4	Q. If we go back to the October 29 letter, if a	15:34
5	2.25 percent royalty were calculated on \$200 billion of	15:34
6	sales, that would be around 4 and a half billion	15:35
7	dollars, right?	15:35
8	A. Let's see. Are you talking about sorry	15:35
9	H.264 here?	15:35
10	Q. Yes.	15:35
11	A. Okay. I mean if you took 2.25 percent, you	15:35
12	multiplied it by the other number you gave, I think the	15 : 35
13	math is approximately correct.	15 : 35
14	Q. Now, if someone at Motorola had gone through	15 : 35
15	the exercise we just went through, it would have been	15 : 35
16	fairly easy to determine that a 2.25 percent royalty on	15 : 35
17	all of the Windows-based PCs is going to be produce	15 : 36
18	an annual royalty of in excess of \$4 billion a year,	15 : 36
19	correct?	15 : 36
20	A. I mean if somebody pulled these number off the	15 : 36
21	Internet and done that math, they could have in	15 : 36
22	principal.	15 : 36
23	Q. Now, there also was publicly available	15 : 36
24	information in October of 2010 concerning what OEMs paid	15 : 36
25	Microsoft for Windows; was there not?	15 : 37